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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Time Warner Cable for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers	)	Docket No. ________

APPENDIX OF STATE COMMISSION DOCUMENTS CITED IN PETITION FOR DECLARATORY RULING

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March 1, 2006

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APPENDIX OF STATE COMMISSION DOCUMENTS
CITED IN PETITION FOR DECLARATORY RULING

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1.	*Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., the Germantown Independent Telephone Co., and Doylestown Telephone Co.*, Finding and Order, Case Nos. 04-1494-TP-UNC, 04-1495-TP-UNC, 04-1496-TP-UNC, 04-1497-TP-UNC (Ohio PUC Ohio Jan. 26, 2005) ("*Ohio PUC Arbitration Order*"), *available at* 2005 WL 389149
2.	*Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Order Resolving Arbitration I ssues, Case 05-C-0170 (New York PSC May 18, 2005) ("*NYPSC Arbitration Order*")
3.	*Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order Denying and Dismissing Petition to Intervene, Docket No. 2005-67-C (South Carolina PSC May 23, 2005)
4.	*Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Order Granting Motions to Dismiss, Docket No. ARB-05-02 (Iowa UB May 26, 2005)
5.	*Cambridge Telephone Company, C-R Telephone Company, El Paso Telephone Company, Geneseo Telephone Company, Henry County Telephone Company, Mid Century Telephone Cooperative, Inc., Reynolds Telephone Company, Metamora Telephone Company, Harrisonville Telephone Company, Marseilles Telephone Company, Viola Home Telephone Company, Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties Under §§ 251(b) and (c) of the Federal Telecommunications Act*, ALJ Recommendation, Case Nos. 050259, 050260, 050261, 050262, 050263, 050264, 050265, 050270, 050275, 050277, 050298 (Cons.) (Illinois Commerce Comm'n Aug. 23, 2005), *available at* 2005 WL 2347930

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6.	*Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order on Arbitration, Docket No. 2005-67-C, (South Carolina PSC Sept. 8, 2005)
7.	*Sprint Communications Company L.P., Overland Park, Kansas, Petition for Arbitration under the Telecommunications Act, of Certain Issues Associated with the Proposed Interconnection Agreement between Sprint and Southeast Nebraska Telephone Company, Falls City*, Findings and Conclusions, Application No. C-3429 (Nebraska PSC Sept. 13, 2005) ("*Nebraska PSC Arbitration Order*")
8.	*Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order Ruling on Arbitration, Docket No. 2005-67-C (South Carolina PSC Oct. 7, 2005) ("*SCPSC Arbitration Order*")
9.	*Petition of Sprint Communications Company L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Brazos Telecommunications Inc.*, Response of Sprint Communications Company L.P., Docket No. 31038 (Texas PUC Nov. 10, 2005)
10.	*Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Order on Rehearing, Docket No. ARB-05-02 (Iowa UB Nov. 28, 2005) ("*IUB Reconsideration Order*")
11.	*Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order Ruling on Arbitration, Docket No. 2005-188-C (South Carolina PSC Jan. 11, 2006)

Re The Champaign Telephone Company
Case No. 04-1494-TP-UNC
Case No. 04-1495-TP-UNC
Case No. 04-1496-TP-UNC

Ohio Public Utilities Commission
January 26, 2005

Before Schriber, chairman, and Fergus, Jones, Mason, and Rogers, Jr., Commissioners.

BY THE COMMISSION:

FINDING AND ORDER

*1 The Commission finds:

(1) On September 28, 2004, applications and petitions were filed by The Champaign Telephone Company (Champaign), Telephone Service Company (TSC), The Germantown Independent Telephone Company (Germantown), and Doylestown Telephone Company (Doylestown) seeking relief as rural telephone companies and rural carriers pursuant to 47 U.S.C. § 251(f)(1) and (2) and the Commission's local service guidelines (LSG) adopted in Case No. 95-845-TP-COI (845 Guidelines), In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues. Champaign, TSC, Germantown, and Doylestown (collectively, 'Applicants') had each received a bona fide request (BFR) for interconnection from MCImetro Access Transmission Services, LLC and Intermedia Communications, Inc. (collectively, MCI) on September 14, 2004. [FN1] Aside from seeking the aforementioned relief, Applicants express concern about MCI's relationship with Time Warner Cable Information Services (Ohio), LLC (Time Warner) and the detrimental financial effect upon Applicants of Time Warner's interest in deploying Voice over Internet Protocol (VoIP) service, particularly when MCI assists in such deployment.

(2) On October 4, 2004, the attorney examiner issued an entry requesting additional information to evaluate the applications and petitions. Applicants were given until November 15, 2004, to file additional information. In addition, any interested party was permitted to file comments in response to the supplemented petitions, no later than December 15, 2004.

(3) On October 26, 2004, MCI filed a motion for leave to intervene, a motion to dismiss the applications and petitions, and a memorandum in support of each motion. MCI supplemented its motion to dismiss on October 29, 2004. Applicants filed a memorandum contra MCI's motion to dismiss on November 15, 2004; as permitted by the attorney examiner in a November 18, 2004, entry, MCI filed a reply to the memorandum contra on November 24, 2004.

(4) On November 15, 2004, Applicants amended and supplemented their applications and petitions. On December 15, 2004, MCI, Time Warner, and The Office of the Ohio Consumers' Counsel (OCC) filed comments concerning the amended applications and

petitions. In addition, also on December 15, 2004, OCC filed a motion to intervene.

(5) In examining the applications and petitions, the Commission first addresses Applicants' argument that MCI is not a telecommunications carrier and that, as a result, Applicants are not obligated to interconnect with MCI. Citing 47 U.S.C. § 251(a), Applicants note that a 'telecommunications carrier' has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Applicants further observe that under 47 U.S.C. § 251(c)(2), an incumbent local exchange carrier (ILEC) is only obligated to provide to a requesting 'telecommunications carrier' interconnection with the local exchange carrier's (LEC's) network for transmission and routing of 'telephone exchange and exchange access' at any technically feasible point within the carrier's network. Thus, argue Applicants, an ILEC is only obligated to connect with 'telecommunications carriers' and only for the transmission and routing of 'telephone exchange' and exchange access. Applicants argue that because MCI is providing service to Time Warner and not to the public for a fee, MCI is not providing 'telecommunications services' and is thus not a 'telecommunications carrier' to which Applicants have obligations specified by 47 U.S.C. § 251. [FN2] Applicants further note that MCI is involved in, essentially, 'a third-party tandem switching arrangement that indirectly connects Time Warner Digital Phone subscribers to LEC subscribers on the PSTN [public switched telephone network].' As such, say Applicants, 'MCI is merely facilitating the indirect connection between the Time Warner Digital Phone subscribers and LEC subscribers, and Section 251 imposes no obligation on the small ILECs to connect on that basis.' Applicants then assert that they have no obligation to Time Warner either, because traffic that is exchanged is clearly Time Warner traffic destined for small ILECs and small ILEC traffic destined for Time Warner. Under these circumstances, say Applicants, (a) any interconnection agreement with Applicants must be with Time Warner, not with MCI as a third-party tandem provider, and (b) Time Warner cannot request interconnection because it claims that its Digital Phone service is not a 'telecommunications service.'

*2 (6) The Commission also takes notice of MCI's response to Applicants' contention that MCI is not a 'telecommunications carrier.' MCI states that Applicants apparently base such a conclusion on MCI's business relationship with Time Warner and the definitions of 'telecommunications carrier,' 'telecommunications service,' and 'telephone exchange service' in 47 U.S.C. § 153. MCI contends that Applicants incorrectly interpret these definitions and the applicability of these definitions to MCI and its services. In explanation, MCI observes that it already has Commission authority to provide local and interexchange service. MCI adds that it plans to roll out service in the Applicants' service territories by submitting orders to Applicants on behalf of Time Warner 'for the purposes of porting customer orders from the ILEC switches to MCI's switches.' By doing so, says MCI, it is acting as a 'telecommunications carrier' and is thus entitled to interconnection for 'transmission and routing of telephone exchange service and exchange access. ' In sum, contends MCI, its function is no different that any other telecommunications carrier whose network is connected with Applicants so that traffic can be terminated to and from each network, as well as across networks. MCI then asserts that the interconnection provisions of 47 U.S.C. § 251(c)(2) contemplate that carriers will act as intermediaries in carrying communications, as well as originating and terminating traffic on each end of the call. [FN3]

Further, says MCI, the interconnection obligation in 47 U.S.C. § 251(a) requires all telecommunications carriers to interconnect their networks 'directly or indirectly,' which in MCI's opinion means that networks may be connected via a third carrier providing transit service. MCI adds that 'telephone exchange service' is defined to include service within a telephone exchange or connected system of exchanges, or comparable service provided via a series of switches, transmission equipment or other facilities 'by which a subscriber can originate or terminate a telecommunications service.' In MCI's opinion, such arrangements are encompassed by 47 U.S.C. § 251(c)(2)(A) and are illustrated in information submitted by Applicants. For Applicants to label MCI as a 'third-party tandem provider,' says MCI, does not mitigate (a) MCI's role in the interconnection of networks for the purpose of providing the gateway to the public switched telephone network or (b) Applicants' duty to provide interconnection. If Applicants' arguments prevail, asserts MCI, ILECs would have no duty to provide interconnection for transit purposes.

(7) The Commission observes that MCI is a certificated carrier in the state of Ohio. As such, MCI is a provider of telecommunications services and is qualified to submit an interconnection request to Applicants. Further, the Commission finds that MCI is acting in a role no different than other telecommunications carriers whose network could interconnect with Applicants so that traffic is terminated to and from each network and across networks. Therefore, the Commission disagrees with Applicants that MCI is not a telecommunications carrier and that Applicants have no duty to interconnect with MCI.

***3** (8) The Commission next examines Applicants' request for a 47 U.S.C. § 251(f)(1) exemption from interconnection obligations and a 47 U.S.C. § 251(f)(2) suspension or modification of interconnection obligations. MCI does not dispute that Applicants are rural telephone companies and that Applicants are LECs with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide. For their part, Applicants concede that MCI's request is technically feasible. However, regarding an undue economic burden, Applicants provide exhibits illustrating a 'dramatic and ruinous' effect on Applicants' revenues and rates, as well as loss of customers, (a) if each access line migrated to Time Warner represents the same amount of customer usage and (b) if the first access lines to migrate are those with the highest usage, while the last to migrate are those with the lowest usage. Applicants further assert that VoIP providers such as Time Warner that bypass the LEC's facilities need not compensate the LEC for interconnection, UNEs, or services other than special access; consequently, argue Applicants, they will receive no compensation from MCI or Time Warner other than for the requested DS3 trunks. Applicants add that costs of providing service to customers will not decrease despite the anticipated loss of customers to Time Warner, while Time Warner can operate free of many costly regulations that Applicants must comply with, such as the Federal Excise Tax, state and local telecommunications sales taxes, and requirements to contribute to the Universal Service Fund. Next, Applicants argue that denial of their request for a rural exemption and the subsequent loss of Applicants' customers will produce results inconsistent with universal service. As discussed above, Applicants believe that Time Warner's projected market penetration into Applicants' territories will force an increase in local rates to recover continuing fixed costs. Applicants further believe that such a rate increase will be conflict with universal service requirements in 47 U.S.C. § 254(b), because such rates will no longer be reasonable or affordable, nor will such rates be reasonably comparable to rates charged for similar services in urban areas.

(9) MCI asserts that the financial information provided by Applicants to illustrate an undue economic burden is misleading and inaccurate. Specifically, says MCI, Applicants only focus upon local service and access charge revenue losses when customers migrate to MCI's service offerings. However, says MCI, there are

certain charges that it will pay to Applicants under terms of an interconnection agreement that is not yet negotiated, including payment for 'submission of LNP orders (a non-recurring service order charge), monthly recurring charges for trunk servicing, interconnection transport charges, traffic transit charges and E911/911 trunking charges (if the ILEC is a PSAP provider).' MCI further states that if Applicants are concerned with MCI's proposed bill and keep for reciprocal compensation, such an arrangement is permitted by the Commission's LSG. MCI adds that certain customer costs are avoided when retail service is no longer being provided, yet Applicants have made the 'unsupported statement' that revenue losses are not coupled with cost decreases. MCI also contends that Applicants' assumptions of penetration by Time Warner and usage per customer are unrealistic and lead to inflated results. For example, notes MCI, not all customers of Applicants are also Time Warner customers, yet Applicants have applied various penetration rates to Applicants' entire customer base to illustrate customer migration to VoIP. According to MCI, Applicants also estimate extremely high usage levels for Applicants' customers, thus exaggerating the amount of access charge losses. MCI disagrees with Applicants' assertion that rates must be raised when revenues decrease; in MCI's opinion, such reasoning is based on a 'make whole' revenue requirement concept that is inconsistent with a competitive environment. Finally, says MCI, any estimate by Applicants of revenue loss -- even if correct -- is equally applicable to customers who switch to competing carriers of any type, not just carriers offering VoIP.

*4 (10) The Commission concludes that it must deny Applicants' request for a blanket exemption from interconnection requirements under 47 U.S.C. § 251(f)(1), as well as Applicants' blanket request for a suspension or modification of such requirements under 47 U.S.C. § 251(f)(2). In doing so, the Commission initially observes that the burden of demonstrating the need to continue such an exemption, or to justify suspension or modification, is on Applicants. As stated by the FCC in CC Docket 96-98:

We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request is made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. (Emphasis added. See CC Docket 96-98, paragraph 1262, page 597, First Report and Order adopted August 1, 1996, released August 8, 1996).

In the next paragraph of its order in CC Docket 96-98, the FCC added:

Given the pro-competitive focus of the 1996 [Telecommunications] Act, we find ...that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of sections 251(b) or (c) should be granted. (See CC Docket 96-98, paragraph 1263, page 597, First Report and Order adopted August 1, 1996, released August 8, 1996.)

The Commission recognizes Applicants' concerns about the economic effect of competition. Still, 47 U.S.C. § 251(f)(1) and (2) address the undue economic burden placed upon a carrier in receipt of a BFR for interconnection. In the

Commission's opinion, and indeed as observed by Time Warner in response to the amended applications and petitions, Applicants have not demonstrated that MCI's request for physical interconnection via DS3 access, in and of itself, will result in an undue economic burden beyond the economic burdens typically associated with efficient competitive entry. Other considerations required of the Commission in determining whether to grant a petition for relief under 47 U.S.C. § 251(f)(1) and (2) include whether a request for interconnection is technically feasible, consistent with universal service requirements, and consistent with the public interest, convenience, and necessity. The Commission observes that neither Applicants nor MCI dispute that MCI's interconnection request is technically feasible. As for the impact of MCI's interconnection request upon universal service requirements and the public interest, the Commission believes that making alternatives available for rural customers is consistent with universal service principles and the public interest, convenience, and necessity.

*5 In sum, Applicants have not demonstrated that MCI's request for interconnection will result in an undue economic burden beyond the economic burdens typically associated with efficient competitive entry. In addition, Applicants have not proven that MCI's request is inconsistent with universal service requirements, or will conflict with the public interest, convenience, and necessity. Therefore, based upon the evidence and arguments presented by Applicants to date, the Commission denies Applicants' requests for relief under 47 U.S.C. § 251(f)(1) and (2).

(11) The Commission again emphasizes that it is cognizant of the special issues faced by Applicants in the increasingly competitive telecommunications environment. Therefore, should Applicants have specific arguments and supporting documentation concerning an undue economic burden associated with MCI's BFR or a particular regulatory requirement, the Commission may consider such arguments and information in the context of a company-specific arbitration. Such arguments and information should not repeat the contentions of Applicants in the September 28, 2004, application and petition, and accompanying November 15, 2004, amendments and supplements; rather, the arguments and information should be narrowly tailored to specific requirements raised through an arbitration request or a regulatory requirement. [FN4]

(12) The Commission presumes that Applicants have not taken steps toward negotiating an interconnection agreement with MCI, given MCI's statement to that effect in its December 15, 2004, filing and Applicants' contention that MCI is not a telecommunications carrier to which Applicants have an obligation for interconnection. The Commission further notes that upon its termination of a rural telephone company exemption, 47 U.S.C. § 251(f)(1)(B) authorizes the Commission to establish an implementation schedule for compliance with the BFR that is consistent in time and manner with Commission regulations. Similarly, upon determining that Applicants will not receive any blanket suspension or modification of interconnection obligations, 47 U.S.C. § 251(f)(2) authorizes the Commission to suspend enforcement of the requirements to which the petition for relief applies with respect to the petitioning carriers. Therefore, the Commission concludes that the nine-month timeframe established in 47 U.S.C. § 252 has been tolled as of the date that these applications were filed. As of the date of this finding and order, the stay has been lifted and the parties are directed to commence negotiations.

(13) Finally, the Commission takes notice of OCC's comments that Applicants should not be allowed to continue their rural exemptions, given Applicants' competition with ILECs through 'edge out' authority, and that Applicants' customers, like the customers of larger ILECs, 'should enjoy the benefits of a competitive

marketplace.' The Commission is also aware of OCC's belief that denying Applicants' petitions and applications is in the public interest only if the competitive service provided via MCI's interconnection -- that is, Time Warner's VoIP -- is made subject to the Commission's Minimum Telephone Service Standards (MTSS). While the Commission does not consider OCC's concerns about applicability of MTSS to VoIP of minor importance, the Commission believes that matters regarding provision of VoIP are best addressed in Case No. 03-950- TP-COI, In the Matter of the Commission's Investigation into Voice Services Using Internet Protocol.

*6 It is, therefore,

ORDERED, That the exemption requests, as well as the suspension and modification requests, of Applicants are denied in accordance with Finding (10). It is, further,

ORDERED, That the nine-month interconnection agreement timeframe is clarified as discussed in Finding (12). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record. Entered in the Journal JAN 26 2005

FOOTNOTES

FN1 Under 47 U.S.C. § 251(f)(1), a State commission shall terminate a rural telephone company exemption if a request for interconnection 'is not unduly economically burdensome, is technically feasible, and is consistent with section 254 [concerning universal service requirement] ....' Similarly, under 47 U.S.C. § 251(f)(2), a local exchange carrier having fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide is eligible for suspension or modification of interconnection obligations if 'the State commission determines that such suspension or modification (A) is necessary (i) to avoid a significant adverse economic impact in users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) in consistent with the public interest, convenience, and necessity.'

FN2 Applicants refer to three definitions from 47 U.S.C. § 153 in making this argument. First, note Applicants, a 'telecommunications carrier' means 'any provider of telecommunications services.' Second, say Applicants, 'telecommunications service' means 'the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available directly to the public, regardless of the facilities used.' Finally, say the Applicants, 'telephone exchange service' is defined as '(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.'

FN3 Under 47 U.S.C. § 251(c)(2), each ILEC has 'the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or to any subsidiary, affiliate, or to any other party to which the carrier provides interconnection; and (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.'

FN4 Prior cases in which the Commission has indicated that it will consider, in the context of a company-specific arbitration, an alleged burden caused by an interconnection request include: Case No. 96-708-TP-UNC, In the Matter of the Application of Cincinnati Bell Telephone Company for Temporary Suspension/Modification of the Requirements of Section 251(b) and (c) of the Telecommunications Act of 1996 and the Commission's Local Service Guidelines; Case No. 96-612-TP-UNC, In the Matter of GTE North Incorporated's Rural Local Exchange Carrier Exemption Under the Telecommunications Act of 1996; Case No. 99-1542-TP-UNC, In the Matter of the Application and Petition of The Western Reserve Telephone Company in Accordance with Section II.A.2.D of the Local Service Guidelines; and Case No. 00-430-TP-UNC, In the Matter of the Application and Petition of ALLTEL Ohio, Inc. in Accordance with Section II.A.2.D of the Local Service Guidelines.

END OF DOCUMENT

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 18, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 05-C-0170 - Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies.

CASE 05-C-0183 - Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Armstrong Telephone Company of New York.

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective May 24, 2005)

BY THE COMMISSION:

INTRODUCTION

On February 9, 2005, Sprint Communications Company L.P. (Sprint) petitioned the Commission to arbitrate, pursuant to the Telecommunications Act of 1996 (the 1996 Act), eleven issues it was unable to resolve with eleven independent telephone companies.[1] On February 14, 2005, Sprint also petitioned us to arbitrate the same issues with respect to the

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[1] The eleven companies are: Berkshire Telephone Corporation, Cassadaga Telephone Corporation, Crown Point Telephone Corporation, Delhi Telephone Company, Dunkirk and Fredonia Telephone Corporation, Empire Telephone Corporation, The Middleburgh Telephone Company, Ontario Telephone Company, Inc., Pattersonville Telephone Company, Taconic Telephone Corporation, and Trumansburg Telephone Company, Inc.

Armstrong Telephone Company of New York.[2] The independent telephone companies responded to Sprint's petitions on March 4, 2005.

On April 5, 2005, the Administrative Law Judge assigned to these cases conducted a telephone conference with the parties to set the schedule for the remainder of the proceedings.[3] With the parties' concurrence, a mediator was provided by the Office of Hearings and Alternative Dispute Resolution to meet with them, on April 11, 2005, and determine whether any of the disputed issues could be settled. Subsequently, the parties notified the Commission that four issues had been resolved and no longer require our action.[4]

On April 20, 2005, the Administrative Law Judge conducted an on-the-record conference. During the conference, the parties reviewed with the Judge their final positions and relevant portions of their written submissions, including the supplements they provided on April 8 and 18, 2005, respectively. Below, we address and resolve the disputed issues in accordance with the 1996 Act's requirements.

THE DISPUTED ISSUES[5]

1. The Definition of "End Users"

For the twelve interconnection agreements, Sprint proposes to use a definition of "end users" that includes other service providers to whom Sprint would provide interconnection, telecommunications and other telephone exchange services. Pointing to Federal Communications Commission (FCC) regulations, the provisions of the 1996 Act and the Public Service Law,

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2 The twelve companies are collectively referred to as the independent telephone companies.

3 Cases 05-C-0170 and 05-C-0183, Ruling Establishing Case Schedule (issued April 6, 2005).

4 Cases 05-C-0170 and 05-C-0183, Amendment of Sprint's Petition for Arbitration, dated April 20, 2005.

5 The disputed issues are identified with the same numbers presented in Sprint's petition and the independent telephone companies' response before any of the issues were settled.

Sprint states that interconnection agreements need not be limited to services for retail customers.

Sprint has entered into a business arrangement with Time Warner Cable which plans to offer voice services in competition with the independent telephone companies. Sprint's agreement with Time Warner requires it to provide interconnections to the public switched network so Time Warner can exchange traffic with telephone companies.[6]

According to Sprint, the independent telephone companies are improperly attempting to preclude local service competition. It believes that Time Warner's provision of local and long distance voice service is consistent with the intent of the 1996 Act and the innovative market entry models the FCC has embraced. It also believes the proposed competition is consistent with the market activity the Commission has fostered. Sprint points out that it has interconnection agreements with other local exchange telephone companies in New York, and elsewhere, that enable Time Warner to offer voice services.[7]

On the other hand, the independent telephone companies claim that the interconnection agreements should not establish Sprint as a "transit provider" for other carriers. According to them, the 1996 Act, §251(b), does not require any anticipation of the needs of third-party service providers who have not sought to establish their own interconnection arrangements.

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[6] The agreement also requires Sprint to provide number acquisition and administration, submission of local number portability orders to local exchange carriers, inter-carrier compensation for local and toll traffic, E911 connectivity, operator services, directory assistance (including call completion) and the placement of orders for telephone directory listings. For its part, Time Warner will provide "last mile" network facilities using hybrid fiber coaxial facilities, marketing and sales, end user billing and customer service.

[7] The following interconnection agreements with local exchange carriers enable Sprint to offer voice services for Time Warner: Case 99-C-1389, Sprint and Verizon New York, Inc. (definition of "customer"); Case 03-C-1799, Sprint and ALLTEL New York, Inc. (Attachment 4-1.1); and Case 03-C-1789, Sprint and Frontier Telephone of Rochester, Inc.

They believe such third-party providers should execute their own interconnection agreements and establish privity of contract with the independents. They also note that their tariffs provide interconnection terms for service providers who do not seek to enter into other arrangements.

* * *

The issue raised here by the independents is whether a proper basis exists for including a third-party telecommunications provider in the interconnection agreements' definition of "end user." The implication is that, by limiting the definition of "end user" to only the residential or business customers served, the independents would preclude Sprint from providing interconnection and telecommunications services, including transit service, to Time Warner Cable.

47 U.S.C. §251 sets forth carrier interconnection responsibilities. It delineates (1) general interconnection duties applicable to all telecommunication carriers [§251(a)]; (2) interconnection obligations for local exchange carriers [§251(b)]; and, (3) additional interconnection obligations that apply to incumbent local exchange carriers [§251(c)]. The independents believe that §251(b) does not require them, as local exchange carriers, to interconnect with a carrier that is not an ultimate provider of end user services, as Sprint concedes it is not. In addition, the independents maintain that Sprint's role as a transit provider for Time Warner Cable means that Sprint is not a telecommunications carrier within the meaning of §251(a) and, therefore, not entitled to interconnection.

The FCC has defined "telecommunications carrier" as "any provider of telecommunications services… ."[8] "Telecommunication services" are defined as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the

[8] 47 U.S.C. §153(44). The definition of "telecommunications carrier" excepts aggregators of telecommunications services, an exception not applicable to Sprint.

public, regardless of the facilities used."[9] Whether a carrier meets the definition of a "telecommunications carrier" entitled to a §251 interconnection depends on whether the services that the carrier provides are "effectively available directly to the public," rather than any characterization of those services.[10]

Sprint's agreement to provide Time Warner Cable with interconnection, number portability order submission, inter-carrier compensation for local and toll traffic, E911 connectivity, and directory assistance, for Time Warner to offer customers digital phone service, meets the definition of "telecommunications services." Sprint's arrangement with Time Warner enables it to provide service directly to the public. While Sprint may act as an intermediary in terminating traffic within and across networks, the function that Sprint performs is no different than that performed by other competitive local exchange carriers with networks that are connected to the independents. Sprint meets the definition of "telecommunications carrier" and, therefore, is entitled to interconnect with the independents pursuant to §251(a).

We find unpersuasive the independents' claim that their §251(b) duties as local exchange carriers are not triggered because Sprint is not an ultimate provider of end user services. The provisions Sprint has offered in Section 2.4 of the proposed interconnection agreements are consistent with the §251 requirements and we find that they should prevail.

2. <u>Indirect Interconnections</u>

Sprint proposes to exchange local traffic with the independent telephone companies by using indirect interconnections where it does not have sufficient local traffic volumes to warrant direct connections. Sprint states that

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[9] 47 U.S.C. §153(46).

[10] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, August 1, 1996, 11 Fcc Rcd 15499, para. 992.

indirect interconnections are allowed by the 1996 Act, the FCC, and the Commission.

The independents are not opposed to indirect interconnections pursuant to §251(a) of the 1996 Act. However, they insist that Sprint must adhere to the requirements of §251(b)(5) and establish dedicated points of interconnection for each independent telephone company network.

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The independents have conceded that 47 U.S.C. §251(a) "affords the option to Sprint of seeking indirect interconnection." Nevertheless, they maintain that Sprint cannot use it as the basis for a §251(b)(5) interconnection request because a direct connection is required to exchange traffic, especially local traffic, between end users in the same rate center. Sprint contends that §251(a) is clear regarding direct and indirect interconnections.

In 1996, the FCC addressed direct versus indirect interconnection and concluded that "telecommunications carriers should be permitted to provide interconnection pursuant to §251(a) either directly or indirectly, based upon their most efficient technical and economic choices."[11] The FCC noted that additional §251(c) interconnection obligations applied only to incumbent local exchange carriers by concluding that "§251(a) interconnection applies to <u>all</u> telecommunications carriers including those with no market power… [because] the duty to interconnect directly or indirectly is central to the 1996 Act and achieves important policy objectives."[12] (emphasis supplied)

Recently, as part of its intercarrier compensation inquiry, the FCC solicited comments regarding transport obligations, including whether the duty to interconnect directly or indirectly pursuant to §251(a) should include an obligation

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[11] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, August 1, 1996, 11 Fcc Rcd 15499, para. 997.

[12] <u>Id.</u>

to provide transport transit service and whether a transit obligation could arise under §251(b)(5).[13] Again, the FCC concluded that, pursuant to §251(a), all telecommunications carriers should provide direct or indirect interconnection depending on efficiency, economic, and technical considerations.

Thus, it is clear that Sprint's position concerning the duty of telecommunications carriers pursuant to §251(a) to interconnect directly or indirectly depending on cost, efficiency, and technical considerations is correct and supported by law, and should therefore prevail.

3. The Definition of "Local Traffic"

Sprint proposes to use a broad definition of "local traffic" that includes calls between telephone numbers in the same rate center, and calls between telephone numbers in different rate centers that have an established local calling area approved by the Commission. The independents, on the other hand, support a more restrictive definition of local traffic, limiting local calls to single telephone exchanges, not extending to local calling areas and excluding internet service provider traffic.

The independents state that local service is typically identified with a single exchange. They insist that extended area service constitutes service between two exchange areas. The independents observe that they have no authority to provide local service in adjacent exchanges operated by other carriers. They also maintain that Sprint's proposed definition was devised for end user purposes, not for intercarrier purposes.

As to internet service provider traffic, the independents claim that FCC precedent supports their position. They observe that the FCC has determined that traffic bound to an internet service provider is not subject to the 1996 Act's reciprocal compensation requirements.

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[13] In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking, released March 3, 2005, 2005 FCC LEXIS 1390, para 128.

Our regulations and orders (in 16 NYCRR §602.1 and Cases 00-C-0789 and 01-C-0181) define local exchange service and provide the requirements for the exchange of local traffic. To comply with our regulations and requirements, the interconnection and the traffic exchange agreements provided by incumbent and competitive local exchange carriers have defined the local service exchange areas and the local calling areas. Thus, the applicable regulations establish the basis for the definition of local traffic that we are requiring here. We find that Sprint's definition of local traffic should be used in the interconnection agreements as it conforms best to the stated requirements.

4. Location Routing Numbers

The independent telephone companies would require Sprint to provide location routing numbers for each telephone exchange. They state this would help to avoid the erroneous routing and incorrect billing of intraLATA and interLATA telephone calls, and prevent call blocking errors.

According to Sprint, the applicable standard for local route numbers is one per switch (or point of interconnection) per LATA. It claims that the independents are expanding the standard by applying it to each of their local calling areas. Sprint believes this would burden number conservation efforts and require carriers to obtain additional codes beyond the existing requirement.

The independents insist, however, that Sprint should have a location routing number for each LATA and incumbent local exchange carrier to which it interconnects. To do otherwise, they claim, is contrary to the industry guidelines and creates potential for misrouted calls. Responding to Sprint's claim that this approach will lead to number exhaustion, the independents believe the claim is overstated. They also believe that Sprint should indemnify and hold them harmless for any call blocking errors due to Sprint's actions.

We find that number conservation is an important consideration here and Sprint's position is persuasive. The burden on number conservation would be substantial if we established location routing number requirements that required Sprint to obtain more NPA/NXXs than it otherwise would. Moreover, the controlling standard for local route numbers is one per switch (or point of interconnection) per LATA and that standard should be maintained.[14] We note that industry standards in the Location Routing Number (LRN) Assignment Practices allow a carrier to obtain more than one LRN per LATA when there are multiple tandems in the same LATA served by different service providers. However, multiple LRNs are not required.

The independents' position -- that Sprint be required to assign a location routing number for each LATA and incumbent local exchange carrier to which it interconnects -- is unduly burdensome for competing carriers and it is not necessary. We find that the independents' concerns about calls made by their customers to Sprint end users with ported numbers being misrouted or blocked is overstated. Sprint has as much interest in preventing the misrouted and blocked calls as do the independent telephone companies. With the introduction of porting, the telecommunications industry addressed this problem and developed long-term database solutions for routing ported numbers. The Local Exchange Routing Guide (LERG) was expanded to handle this situation and the database contains location routing numbers to correctly route calls, whether they are ported numbers or not.

8. Interference with Third Party Services

Sprint proposes language requiring the parties not to interfere with, or impair, the other party's services or any services provided by third parties or other carriers. Such language is commonly referred to as a "network harm" provision. It typically states that neither party will use any service that causes hazards to the other's personnel or equipment. Sprint

[14] CC Docket No. 95-116, RM 8535, In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, Appendix E.1.1; CC Docket No. 01-92, In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9634, 9650-51, paras. 72, 112.

believes this provision is needed to protect its interests and those of the telecommunications providers for whom it would provide transit services.

As discussed above, the independent telephone companies prefer to negotiate directly with the carriers who would use Sprint's network. They insist that the proposed transit provider provisions for the agreements are improper and should be rejected. In other contexts, the independents observe, the parties do not intend to provide third parties any benefits, remedies, claims or rights. Further, they claim the term "non-party telecommunications provider" is vague, ambiguous and inconsistent with the 1996 Act's provisions.

We have approved traffic exchange and interconnection agreements containing clauses and provisions similar to the one Sprint proposes here.[15] We find no basis or any valid reason to reject Sprint's proposed language. It provides a means to protect the carriers' business arrangements, and we therefore endorse it. Where the parties have stated in the interconnection agreements that they do not intend to provide third parties any benefits, remedy, claim, or other rights, the provisions should indicate clearly that they do not apply to Sprint's arrangements with Time Warner Cable.

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[15] For example, Case 03-C-1799, Interconnection Agreement of Sprint Communications Company L.P. and ALLTEL New York, Inc. (General Terms and Conditions, p. 13); Case 01-C-0589, Mutual Traffic Exchange Agreements of Sprint Communications Company L.P. and Citizens Telephone Company (Attachment 1, p. 8).

9. Charges for Default Routing

Sprint proposes to charge for the default routing of local calls.[16] In support of its proposal, Sprint observes that the FCC has allowed carriers to charge for default routing. Sprint insists that it should not bear any default routing transit or termination costs for the independents' originating traffic. To protect against this financial vulnerability, Sprint believes the matter should be addressed in the interconnection agreements.

The independent telephone companies agree that a carrier who fails to undertake local number portability data base inquiries should compensate the party who conducts the inquiries. However, they see no need to include such charges in the interconnection agreements. They note that the carrier costs associated with local number portability are interstate costs that are recoverable through interstate tariff recovery mechanisms.

We find that Sprint is correct; transit costs associated with default routing are not recovered through the FCC tariff. Federal tariff charges cover the cost of Sprint performing the query and internal network costs, but not the charges imposed by other carriers on Sprint for call completion (e.g., transit and termination). These additional costs, not covered by the FCC tariff, would not have been incurred by Sprint if the originating carrier had performed the query and routed the call to the terminating carrier. Any originating carrier would avoid these charges if they perform the query before routing the call. Sprint should be able, by virtue of

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[16] Routing is simply the process of selecting the circuit path for a message. Default routing occurs when a company originating a call does not query all of the applicable number routing databases, due to limitations of its systems, and misses certain call routing information. As a result the call routes to the original number location (switch) instead of the location to which the number was ported. The default carrier which then receives the misrouted call must query the applicable databases, retrieve the routing information, and then route the call to completion; in addition, it unnecessarily incurs the cost of processing the misdirected call.

its interconnection agreements with the independents, to recover these charges from originating carriers that fail to query the database.

11. Telephone Directory Listings

The parties agree that the telephone numbers for Sprint-served customers physically located in a local service area should be listed in the independent's telephone directory. They disagreed as to whether Sprint customers with telephone numbers for a rate center, but no physical presence other than a loop, should also be included in the telephone directory.

In support of its position, Sprint states that it seeks only the types of subscriber listings that the independents provide their own customers. In response, the independents state that they are willing to provide Sprint customers equivalent, but not more favorable, directory listings. They also propose to include in the interconnection agreements provisions to cover the handling and shipping charges for the telephone directories that Sprint orders.

We find that the customers served by Sprint should be able to obtain the kinds of directory listings that the independents provide for the foreign exchange customers that they serve. The interconnection agreements should clearly provide for the comparable treatment of foreign exchange customers and specify the applicable charges for the telephone directories that the independent telephone companies provide.

Local Number Portability

In addition to the disputed issues identified in Sprint's February 2005 petition, the independents raised a local number portability matter in their March 2005 response.

The independent telephone companies claim to have provided clear and specific terms (for inclusion in Section 6.1 of the interconnection agreements) to establish the baseline requirements for local number portability. The provisions address when and how local number portability is provided from end offices, and the treatment of customer requests that trigger the need to port telephone numbers. The independents state that these provisions will help to avoid delays and potential issues when porting activity is required.

The independents object to Sprint's proposed language for Section 6.1 and claim it is vague and uses undefined terms that would permit Sprint to avoid the baseline requirements that the independent telephone companies believe are necessary. They also criticize Sprint's revisions for not defining adequately the local number portability architecture that the parties plan to use.

We find that the provisions offered by the independent telephone companies for Section 6.1 of the interconnection agreements are generally acceptable and preferable as they more specifically address the process that is envisioned for performing local number portability. We also note, however, that the independent telephone companies have an obligation to follow the promulgated industry practices and standards applicable to local number portability at all of their central offices. Consequently, we do not intend for the interconnection agreements to change any of those requirements and obligations.

CONCLUSION

As provided above, we have resolved the issues Sprint and the independent telephone companies have submitted to us for arbitration. The parties are expected to execute interconnection agreements consistent with the uncontested results of their negotiations and with our determinations in this order on a timely basis.

The Commission orders:

1. The issues presented for arbitration by Sprint Communications Company L.P. and the independent telephone companies listed in this case are resolved as decided herein.

2. By no later than June 30, 2005, Sprint Communications Company L.P. and each independent telephone company identified in this order shall submit an executed interconnection agreement for Commission approval.